STATE OF MICHIGAN

COURT OF APPEALS

METRO CHARTER ACADEMY, METRO CHARTER ACADEMY VICE PRESIDENT, METRO CHARTER ACADEMY TREASURER,

Plaintiffs-Appellants/Cross-Appellees,

v

GRAND VALLEY STATE UNIVERSITY,

Defendant-Appellee/Cross-Appellant,

and

METRO CHARTER ACADEMY,

Intervening-Defendant/Appellee.

UNPUBLISHED
August 23, 2005

No. 255197
Wayne Circuit Court
LC No. 04-404186-CK

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action for declaratory and injunctive relief, plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant Grand Valley State University (GVSU).[1] GVSU cross-appeals from this same order, challenging the trial court's denial of its motion for sanctions. We affirm.

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[1] Although the trial court orally granted Metro Charter Academy's motion to dismiss it as a party plaintiff in this matter and rejoin the suit as an intervening defendant, it appears that no written order of that dismissal was ever entered by the court. Metro Charter Academy therefore remains both a plaintiff and a defendant. For purposes of this opinion, however, all references to "plaintiffs" are to plaintiffs Justin Mordarski and Leonard Mungo, as the respective vice president and treasurer of Metro Charter Academy at the time this suit was filed.

At issue in this case is the authority of GVSU, as the authorizing body of Metro Charter Academy, to remove a member of the academy's board of directors by modification of the length of the term to be served by that member. Plaintiffs argued below that GVSU exceeded its powers under the contract by which the academy was chartered when, after it had ratified their appointments, it modified the length of the terms to be served by academy board members Justin Mordarski and Leonard Mungo. Finding that GVSU acted within its statutory and contractual power of oversight, the trial court disagreed and granted summary disposition in favor of GVSU.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). The trial court did not articulate which subrule it relied on in deciding GVSU's motion. But because the court considered matters outside the pleadings, we review the court's decision under MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). Summary disposition under MCR 2.116(C)(10) is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). Issues requiring statutory interpretation or contractual construction are questions of law also reviewed de novo by this Court. *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005); *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004).

Pursuant to the revised school code, MCL 380.1 *et seq*., the authorizing body of a public school academy is required to oversee operation of the academy to ensure compliance with the terms of the authorizing contract and all applicable laws, MCL 380.502(4), and may revoke a contract for an academy's noncompliance with the terms of the contract or any applicable law. MCL 380.507. See also *Council of Organizations & Others for Education About Parochiaid v Governor*, 455 Mich 557, 565-567; 566 NW2d 208 (1997). The contract by which Metro Charter Academy was established specifically incorporated the authorizing resolution adopted by GVSU, which, as required by MCL 380.503(4), sets forth the method of selection, length of term, and number of members of the Metro Charter Academy board of directors. It is not disputed that this resolution expressly authorizes the academy board of directors to remove a board member by two-thirds vote of the academy board, and to itself fill board vacancies through nomination and appointment of new board members for a term of up to three years. However, with respect to such nominations and appointments, the resolution also provides:

> Method of Selection
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> * * *
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> All Academy Board of Director appointments must be submitted to the University Board of Control for ratification at its next regularly scheduled meeting. *The University Board of Control retains the authority to review, rescind, modify, or ratify any Academy Board appointment made by the Academy's Board of Directors*. [Emphasis added.]

Plaintiffs argued below that GVSU did not, in its resolution, reserve for itself the power to remove an academy board member and could not do so by modifying the terms of a board member's office *after* it had ratified the member's appointment. The trial court disagreed, finding that GVSU expressly retained the power to modify board appointments by the operative language emphasized above and, therefore, did not exceed its authority when it modified

Mordarski's and Mungo's terms of office. In reaching this conclusion, the trial court reasoned that although plaintiffs' argument was plausible given that the heading of the paragraph appears to address only GVSU's authority before ratification, the operative language itself was not ambiguous and must be interpreted consistent with the public policy conveying plenary authority over a public school academy to its authorizing body. We agree with the trial court and conclude that GVSU acted within its statutory and contractual authority in modifying the terms of office at issue here.

Contracts must be construed in their entirety and in accordance with their terms. *Perry v Sied*, 461 Mich 680, 689; 611 NW2d 516 (2000). The parties are presumed to have understood the import of the contract's terms and to have had the intention manifested by those terms. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). "In interpreting contracts capable of two different constructions, [courts] prefer a reasonable and fair construction over a less just and less reasonable construction." *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 188; 565 NW2d 887 (1997). Moreover, when reasonably possible, a court should interpret contractual provisions that potentially conflict with statutes to harmonize with the statutes. See *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002).

Plaintiffs would have this Court hold that once GVSU ratifies a board member's appointment, it has no power to remedy acts of that member that are unlawful or otherwise outside the charter's mandate, short of revoking the academy's contract. However, although the contract at issue here specifically states that the academy board has the power to remove its members by a two-thirds vote of that board, there is nothing in the language of the contract to indicate that all such removal power is reserved to the academy board alone. To the contrary, GVSU specifically reserved for itself "the authority to review, rescind, modify, or ratify any Academy Board appointment made by the Academy's Board of Directors." The fact that this language is contained under the heading "Method of Selection" does not clearly limit GVSU's ability to exercise this power to the period prior to its ratification of a board appointment, and no contract language provides to the contrary. A contract for a public school academy is "an executive act" taken by the authorizing body, the language of which should be interpreted by this Court in a manner consistent with the public policy underlying the grant of such authority. See MCL 380.501(2)(d); see also *Cruz*, *supra*. It was the intent of the revised school code that the public govern the operation of a public school academy through its authorizing body. See *Parochiaid*, *supra* at 566-567, 572-575. The Legislature bestowed upon the authorizing body the duty and obligation to ensure a public school academy's compliance with the authorizing contract and all applicable law, specifically affording authorizing bodies the sole and non-reviewable discretion to revoke an academy's charter. See MCL 380.502(4) and MCL 380.507. That defendant reserved for itself the ability to remedy an outlaw board member or board action other than by revoking the academy's charter contract is consistent with its legislative mandate and a reasonable construction of the terms of the contract. Consequently, the trial court did not err in concluding that GVSU acted within its statutory and contractual authority when it modified Mordarski's and Mungo's terms of office.[2]

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[2] Plaintiffs also argue that the trial court erred when it granted the motion to strike Metro Charter
(continued…)

On cross-appeal, GVSU argues that because counsel for plaintiffs was involved in a suit wherein a claim similar to that at issue here was rejected, the trial court erred in denying its motion for sanctions. Again, we disagree.

Upon motion of a party, if the court finds that an action of a party was frivolous it must impose costs and attorney fees as sanctions against the non-prevailing party and their attorney. MCL 600.2591; MCR 2.625; *Lakeside Oakland Development, LC v H & J Beef Co*, 249 Mich App 517, 531-532; 644 NW2d 765 (2002). A claim or defense is frivolous when (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party; (2) the party had no reasonable basis to believe that the underlying facts were true; or (3) the party's position was devoid of arguable legal merit. MCL 600.2591(3)(a); *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 35-36; 666 NW2d 310 (2003). Sanctions may also be imposed pursuant to MCR 2.114(E) for violation of MCR 2.114(C). A trial court's decision regarding a motion for sanctions will not be reversed on appeal unless clearly erroneous. *Lakeside*, *supra* at 532. A decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

Initially, we note that the prior action cited by GVSU as support for the claimed frivolousness of the instant suit involved different parties and is factually distinguishable from the present action. Plaintiffs' claims here stem from unique contractual language regarding GVSU's power as an authorizing body to modify board member terms subsequent to ratification. Moreover, plaintiffs claims were not devoid of legal merit and the facts do not indicate that this suit was filed with the intent to harass GVSU. Plaintiffs sought relief based on their reading of the charter contract, which, as noted above, the trial court found to be plausible. The contract language, as plaintiffs interpreted it, provided them a reasonable basis to contest GVSU's actions. The fact that plaintiffs were ultimately unsuccessful does not render their claims groundless or completely devoid of legal merit. See *Jerico*, *supra* at 36; see also *Lakeside*, *supra* at 532 (holding that the party's claim was not devoid of legal merit where the facts as conveyed by the party would support their claim and the law, in certain circumstances, may provide a remedy). Consequently, we find no clear error in the trial court's decision to deny GVSU's motion for sanctions.

For these same reasons, we deny GVSU's request that plaintiffs be sanctioned for filing a frivolous appeal. "This Court has imposed sanctions where the appeal is brought 'without any reasonable basis for belief that there was a meritorious issue to be determined on appeal.'" *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 268; 548 NW2d 698 (1996), quoting MCR 7.216(C)(1)(a). Although plaintiffs' appellate arguments are ultimately unpersuasive, we

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(…continued)

Academy as party plaintiff and allow it to intervene as a defendant. Specifically, plaintiffs contend that the presence of three board members at the January 29, 2004 meeting whereat this suit was authorized constituted a quorum of the board and, therefore, the Metro Charter Academy board's action was valid. However, in light of our decision to affirm the trial court's grant of summary disposition, this claim of error is moot. See *Ryan v Ryan*, 260 Mich App 315, 330; 677 NW2d 899 (2004).

conclude that, for the reasons cited above, there was a reasonable basis for belief that there was a meritorious issue to be determined on appeal.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey